BOWLES' ADM'R *v.* VIRGINIA SOAPSTONE CO.

Jan. 15 1914.

[80 S. E. 799.]

1. Master and Servant (§ 270*)—Action for Injuries—Evidence—Subsequent Precaution.—In an action for the death of plaintiff's intestate from a fall of rock in defendant's quarry, evidence that the inspection of the walls of the quarry was more frequent after the accident than before, that defendant put other pins in the walls, and that the wall afterwards caved in, as a result of which the quarry had to be abandoned, was inadmissible to show negligence at the time of the accident.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 913-927, 932; Dec. Dig. § 270.* 9 Va.-W. Va. Enc. Dig. 724.]

2. Evidence (§ 99*)—Materiality.—In such an action, evidence that deceased had expressed himself as well satisfied with his place was properly excluded as wholly immaterial to the issue.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 123, 137-143; Dec. Dig. § 99.* 5 Va.-W. Va. Enc. Dig. 299; 14 Va.-W. Va. Enc. Dig. 412; 15 Va.-W. Va. Enc. Dig. 352.]

3. Evidence (§ 553*)—Examination of Expert—Hypothetical Question.—In an action for the death of plaintiff's intestate from a fall of rock in a quarry, a hypothetical question to an expert as to whether it was safe to rely on pins to hold in position a mass of 50 to 60 feet long and 20 to 30 feet wide was properly excluded where it submitted a condition of facts which could not be known until after the occurrence of the accident.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 2369-2374; Dec. Dig. § 553.* 5 Va.-W. Va. Enc. Dig. 757; 14 Va.-W. Va. Enc. Dig. 436; 15 Va.-W. Va. Enc. Dig. 388.]

4. Master and Servant (§§ 101, 102*)—Master's Liability—Safe Place and Appliances—"Ordinary Care."—The master must exercise ordinary care to provide safe and suitable appliances for the work, and to provide generally for the safety of the servant in his employment in view of the nature of the work and the dangers attending it; but he is not bound to provide the latest inventions or the newest appliances, for, no matter how hazardous the work, he is held only to "ordinary care," which is such care as a person of ordinary prudence under all circumstances would exercise, ascertainable by the general usages of the business.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 174, 178-184, 192; Dec. Dig. §§ 101, 102.* 9 Va.-W. Va.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

Enc. Dig. 669; 14 Va.-W. Va. Enc. Dig. 685; 15 Va.-W. Va. Enc. Dig. 646.

For other definitions, see Words and Phrases, vol. 6, pp. 5029-5042; vol. 8, pp. 7739, 7740.]

5. Master and Servant (§ 270*)—Action for Injuries—Evidence—Reasonable Care.—On the question whether a master has exercised reasonable and ordinary care in providing safe appliances and places for work, evidence of the general practice of other masters in similar work is admissible; but a specific act of an individual engaged in working under wholly different conditions is inadmissible.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 913-927, 932; Dec. Dig. § 270.* 9 Va.-W. Va. Enc. Dig. 724; 14 Va.-W. Va. Enc. Dig. 698; 15 Va.-W. Va. Enc. Dig. 659.]

6. Appeal and Error (§ 1050*)—Harmless Error—Admission of Evidence.—In an action for the death of plaintiff's intestate from the fall of stone in a quarry, evidence that the method adopted by defendant of pinning up the cracks in the walls and of inspecting them was generally known to its servants, if erroneous, was not prejudicial.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1068, 1069, 4153-4157, 4166; Dec. Dig. § 1050.* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

7. Master and Servant (§ 264*)—Action for Injuries—Evidence—Application to Issues.—In an action for the death of plaintiff's intestate from a fall of rock in a quarry, where the declaration charged negligence, in that the walls were so perpendicular that loosened stones would be liable to fall from the jar incident to the work, whereby it was not a reasonably safe place of work, evidence as to the method of quarrying, the use of pins, etc., to support walls, was inadmissible under the pleading.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 861-876; Dec. Dig. § 264.* 9 Va.-W. Va. Enc. Dig. 724; 14 Va.-W. Va. Enc. Dig. 698; 15 Va.-W. Va. Enc. Dig. 660.]

8. Master and Servant (§§ 101, 102*)—Master's Liability—Degree of Care.—A master is not an insurer of the servant's safety; but his duty is performed if he exercises reasonable care to provide and maintain a reasonably safe place to work.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 135, 171, 174, 178-184, 192; Dec. Dig. §§ 101, 102.* 9 Va.-W. Va. Enc. Dig. 667; 14 Va.-W. Va. Enc. Dig. 684; 15 Va.-W. Va. Enc. Dig. 644.]

9. Words and Phrases—"Seam."—A "seam," as used in mining, is a thin layer or stratum, a narrow vein, between two thicker strata,

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

differing from a crack, because there is no actual parting of the substance in which the seam appears, though it may develop into a crack.

[Ed. Note.—For other definitions, see Words and Phrases, vol. 7, pp. 6734; vol. 8, p. 7796. 12 Va.-W. Va. Enc. Dig. 116.]

10. Master and Servant (§ 278*)—Action for Injuries—Sufficiency of Evidence—Safe Place to Work.—Evidence, in an action for the death of plaintiff's intestate from the falling of stone in a quarry, from the alleged negligence in leaving perpendicular unsupported walls, held sufficient in view of the hazards of the work, to show that defendant had used reasonable care to furnish a place reasonably safe for work.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 954, 956-958, 960-969, 971, 972, 977; Dec. Dig. § 278.* 9 Va.-W. Va. Enc. Dig. 725; 15 Va.-W. Va. Enc. Dig. 659.]

Error to Circuit Court, Nelson County.

Action by Nathaniel Bowles' Administrator against the Virginia Soapstone Company. Judgment for defendant, and plaintiff brings error. Affirmed.

Caskie & Caskie, of Lynchburg, for plaintiff in error.

P. H. C. Cabell, of Richmond, and *Coleman, Easley & Coleman,* of Lynchburg, for defendant in error.

NORFOLK COUNTY WATER CO. *v.* WOOD.

March 12, 1914.

[81 S. E. 19.]

1. Eminent Domain (§ 10*)—Charter of Water Company—Private Purpose.—Where the charter of a water company gave it power to hold real estate, take water, pipe it, and sell the same to individuals or corporations, make contracts, etc., but contained no provisions requiring the power to be employed directly for a public use, or forbidding it from using all the water obtained by it for a purely private use, such as a manufacturing business, or from selling it all to one person, the water company did not have the right of eminent domain.

[Ed. Note.—For other cases, see Eminent Domain, Cent. Dig. §§ 35-48; Dec. Dig. § 10.* 5 Va.-W. Va. Enc. Dig. 877; 14 Va.-W. Va. Enc. Dig. 386; 15 Va.-W. Va. Enc. Dig. 331.]

2. Eminent Domain (§ 10*)—Water Company—Right of Legislature to Grant—Public Use.—That the Legislature has given a water company the right of eminent domain and the grant has been accepted

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.